IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.114 OF 2006

Smt Raghavi Kalpesh Sanghvi ...Applicant

Versus

Shri Kalpesh Inswardas Sanghvi ...Respondent

Shri Nitin P. Deshpande for the Applicant.
Mrs Anita Agarwal with Shri I.A. Bagaria for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 04, 2007.

P.C.:

1. This Application was heard from time to time. Efforts were made to arrive at an amicable settlement. However, the efforts have failed and hence, I have taken up the Application for hearing.

2. The Applicant is the wife and the Respondent is the husband. The Respondent-husband has filed a petition for divorce under the Hindu Marriage Act, 1955 in the Family Court at Mumbai. The Petitioner wife has also filed a Petition for restitution of conjugal rights in the Family Court at Mumbai. The prayer in this Application is for transfer of both the Petitions from Family Court at Mumbai to the Family Court at Pune. Various ground have been pleaded in the Application for seeking transfer. It is stated that the Applicant filed

her Petition in the Family Court at Bombay because she was advised that if any matrimonial proceedings are initiated in the Family Court at Pune, the said Court may not have territorial jurisdiction. It is stated that she has no source of income and she has to fall back upon her father to provide a companion for travelling upto Mumbai to attend the court proceedings. My attention was invited to order dated 15th April, 2005 passed by this Court in Criminal Application No.1976 of 2005. By the said order, an interim arrangement has been made for grant of access to the Respondent to meet the minor child. It is contended that for complying with the said order, the Applicant is required to visit the office of Respondent's Advocate at every weekend. Number of difficulties are pointed out in the Application for attending the proceedings pending in the Family court at Mumbai.

3. I have heard the learned counsel appearing for the parties. In paragraph No.7 of order dated 15th April, 2005 in Criminal Application No.1976 of 2005, the learned single Judge of this Court has observed thus:

> "7. The learned counsel for respondent No.2 on instructions from his client states that she has some apprehensions of taking

custody of the child from the house of the applicant as her experience is that she has been abused and insulted by the applicant and his family members. She is, however, ready to take custody of the child from the office of Shri I.A.Bagaria, advocate for the applicant at 9.00 a.m in the morning on Saturday and return it back to the applicant at the office of Shri I.A.Bagaria on Sunday night at 9.00 p.m. Undertaking is accepted".

4. In paragraph No.8 of the said order the learned Judge observed that the parties are at liberty to approach the appropriate court for obtaining further orders as regards the custody of the minor child. The learned Judge have observed that aforesaid order has been passed in order to ensure that the parties have an access to meet the child considering the welfare of the child. Liberty has been granted by this Court to the parties to apply for further orders as regards custody of the minor child during summer vacation of the school. The Advocates appearing for the parties have tendered minutes of orders which are duly signed by both the parties. In the minutes of order the parties have agreed for modification of the interim arrangement made in terms of paragraph No.7 of the order dated 15th

April, 2005 passed in Criminal Application No.1976 of 2005. The orders as regards custody and/or visitation rights are never final in the sense that the same can be always modified keeping in mind the change in circumstances and the welfare of the minor child. The agreed modification suggested appears to be reasonable and parties will have to be directed to abide by the modified arrangement.

5. So far as transfer is concerned, it is Applicant who has filed her Petition in the Family Court at Mumbai. This by itself is no ground to reject the prayer for transfer. However, it must be noted that the Petitions have reached the stage of hearing and affidavits of examination-in-chief has been filed by the Respondent. Therefore, at this stage, the prayer for transfer of the Petitions cannot be acceded to as the interests of justice require that both the Petitions should be disposed of expeditiously. The order of transfer at this stage will have the result of prolonging the hearing of both the Petitions. Considering the relative young age of both the parties, the delay in disposal of the matrimonial Petitions will cause prejudice to both the parties. Therefore, the prayer for transfer cannot be acceded to.

6. However, some outer limit will have to be fixed for final disposal of the pending matrimonial Petitions. I have ascertained from the learned counsel appearing for the parties the nature of evidence which they propose to lead. I find that if both the parties cooperate, trial can be concluded expeditiously and preferably on or before 31st August, 2007.

7. Hence, Application is disposed of by passing following order:

(i) Prayer for transfer stands rejected.

(ii) The concerned Family Court will decide the M.J.Petition Nos.A-552 of 2005 and A-798 of 2005 as expeditiously as possible and preferably on or before 31st August, 2007. Both the parties are directed to co-operate with the learned Judge of the Family Court for expeditious disposal of the case by not seeking adjournments on any unreasonable ground.

(iii) The interim arrangement made for access to meet the minor child which is recorded in paragraph No.7 of order dated 15th April, 2005 in Criminal Application No.1976 of 2005 stands modified in

terms of agreed minutes of order tendered in this court. The modification reads as under :

". That now respondent will give access of son Dhanvin once in a month i.e in last fourth Saturday every month by taking Dhavin to Pune to the office of Advocate Shaila Kunchur at Gandharva, Flat No.102, CTS No.1204/18, Shivaji Nagar, Pune 411 004 on last Saturday of every month between 10.30 a.m to 11.00 a.m and will collect access of Dhavin back on next day i.e Sunday at 12.00 noon from the office of the said advocate mentioned above".

(iv) It is clarified that no other modification is made in order dated 15th April, 2005 in Criminal Application No.1976 of 2005 save and except what is stated above and the said order stands.

(v) All contentions of the parties on merits of the pending Petitions are expressly kept open.

(vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE